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PROTECTION OF AMERICAN COMMERCE AND CAPITAL ABROAD

BY JOHN BALL OSBORNE

THE vast extent of the present commercial and financial interests of American citizens in foreign countries is a matter of common knowledge and national pride. But the means available to the Government of the United States for the protection of these various interests against injustice is not so well known. From time to time, however, when instances of discrimination or other injurious treatment by a foreign government arise the ways and means of adequately meeting the situation by reprisals or otherwise, become a matter of serious concern. This was the case early in 1910 at the time of the threatened tariff war first with Germany and then with France, prior to the tariff settlements with those countries; and again, more recently, in connection with the discussion of the effects on American business interests of the German Potash Law of 1910.

It is well to consider briefly the extent of the stake. For the first time in our history the exports of American products to foreign countries exceeded, in the fiscal year ended June 30, 1911, a valuation of \$2,000,000,000. The proportion of manufactured goods in this export trade is steadily increasing, which means that the volume of American products requiring protection against tariff discrimination in foreign markets is expanding, inasmuch as it is against our factory goods that such discrimination is generally practised. Raw materials such as cotton, copper, petroleum, and grains are, almost invariably, either exempt from duty or subject to non-differential rates, since they are required to meet the manufacturing needs of the importing countries. Excepting in a few countries where

agrarian influences dominate the commercial policy, the same consideration applies to our foodstuffs other than grain. The foreign nations rarely impose unusual burdens upon the imports of these products, for by so doing they injure themselves. Our manufactures, on the other hand, compete usually with domestic manufactures, as well as with those of other origins, so that discriminatory tariff treatment operates merely to draw the required importations more largely from the commercial rivals of the United States.

On the basis of the detailed figures of our exports for the fiscal year 1910, manufactured goods—that is, those ready for consumption and those for further use in manufacturing—constituted forty-five per cent. of the total; to which might be added fifteen per cent. for foodstuffs partly or wholly manufactured, making sixty per cent. On the basis of the exports for the fiscal year 1911, this means that American exports to the value of about \$1,200,000,000 are peculiarly susceptible to discriminatory treatment and need the vigilant protection of the United States Government, while the remaining forty per cent., being composed of crude materials for use in manufacturing and foodstuffs in crude condition and food animals, are not so vulnerable, because the importing countries consult their own economic interests and admit them free of duty or on reasonable terms and without discrimination. There are, of course, a few exceptions to this rule.

Europe is the trade region where the great bulk of our exports go, and hence our solicitude as to tariff conditions in the various European countries is especially great. In 1910 the distribution of our exports throughout the world was as follows: to Europe 65.10 per cent.; North America 22.09 per cent.; South America 5.34 per cent.; Asia 3.49 per cent.; Oceania 2.92 per cent., and Africa 1.06 per cent.

The American merchant marine engaged in the foreign carrying trade, of course, requires the protection of our Government, as well as American commerce; but, unfortunately, these interests are not extensive. In 1910 American vessels carried only 8.7 per cent. of the combined exports and imports of the United States, the percentage of the former being 7.5 per cent. and the latter 10 per cent.

Almost equally important with the commercial interests, from the standpoint of our present inquiry, is the extent of

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what we may term the extra-territorial investments of American capital—that is, the investments of the capital of American citizens in foreign countries. Twenty years ago I doubt whether there was, all told, more than \$500,000,000 of American money invested outside the United States. At the present time the total is about \$2,000,000,000, distributed by countries somewhat as follows:

North America:

Dominion of Canada.....	\$400,000,000
Mexico	800,000,000
Cuba	220,000,000
Haiti and Dominican Republic.....	7,500,000
Costa Rica.....	7,000,000
Guatemala	20,000,000
Honduras	3,000,000
Nicaragua	2,500,000
Panama	5,000,000
Salvador	2,500,000

South America:

Argentine Republic.....	\$40,000,000
Bolivia	10,000,000
Brazil	50,000,000
Chile	15,000,000
Colombia	2,000,000
Ecuador	10,000,000
British and Dutch Guianas.....	5,000,000
Peru	35,000,000
Uruguay	5,000,000
Venezuela	3,000,000

\$1,467,500,000

Europe	175,000,000
Near East.....	200,000,000
Far East and all other regions.....	10,000,000
	50,000,000

Grand total.....\$1,902,500,000

In making up the foregoing estimates I have consulted the best authorities—for instance, in the case of the Latin-American countries, the Pan-American Union and Mr. Charles M. Pepper. The Canadian figure might seem rather high; but an agent of the British Board of Trade at Toronto recently made an itemized statement showing \$417,000,000 American capital invested in the Dominion. The Cuban estimate is one made officially by Consul-General Rodgers of Havana.

Due account has been taken of the well-known fact that the nationality of a large amount of American capital invested abroad is not disclosed, being in foreign corporations

or foreign loans. There are cases where American citizens who own stock in foreign corporations are unwilling to make their holdings known for business reasons. On the other hand, there are numerous cases where the majority of the stock in a corporation chartered under the laws of one of the States of the Union is owned by aliens. The corporation is nominally American and yet substantially foreign. In several instances corporations of this character have invoked the protection of the United States Government, their legal right to do so being apparently well founded. This has occurred more often in South America than elsewhere. In the Latin-American countries bona fide American investments rarely fail to disclose their identity, while, as already intimated, the contrary policy is followed in Europe. For instance, the American ownership of the Sollstedt potash mine in Germany became generally known only when the validity of the American contracts became a diplomatic question.

Let us now see what means have been and remain available to the Government of the United States for the protection of the foreign commerce and extra-territorial financial investments of American citizens. A brief historical review will be useful as a background for the present practical phases of this important question.

The first instance of retaliatory action on the part of the United States was directed against France in 1798. In reprisal for the repeated seizures of American vessels by French privateers, as well as for insults against the envoys of the United States, Congress passed the Act of July 7, 1798, which abruptly abrogated all our treaties with France, including the commercial convention of 1778, which had regulated the trade relations between the two countries.

The persistent warfare by British vessels on American commerce in the early years of the nineteenth century was met by the Non-Importation Act of 1806, which prohibited the importation of such British manufactures as could be obtained elsewhere or produced in this country. This proved ineffectual. In retaliation for the English Orders in Council, as well as the Berlin and Milan decrees of Napoleon, Congress adopted the Embargo Act of December, 1807, which forbade all vessels to leave any American port for a foreign country. This being entirely too drastic and injurious to the United States, the Non-Intercourse Act of

1809 was passed, removing the barriers against trade intercourse with all countries excepting England and France.

In 1832 Spain imposed discriminating duties upon American vessels entering the ports of Cuba and Porto Rico. This Government retaliated against Spanish vessels in our ports, and it was not until 1884-1887 that a series of agreements between the two countries put an end to these restrictions.

Shortly after the termination of the fishery clauses of the Treaty of Washington, the Canadian authorities seized several American vessels engaged in the North Atlantic fisheries. Congress in 1887 provided the means of retaliation in an Act which authorized the President to forbid the entry of Canadian vessels in American ports. Happily there was no further occasion for bringing into operation the drastic powers of this law.

The most radical legislation, however, is contained in Section 5 of "an Act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes," approved August 30, 1890. While some of the provisions of this law have been superseded by the Meat Inspection Law of June 30, 1906, Section 5 is regarded by eminent lawyers as still in force. It reads as follows:

"That whenever the President shall be satisfied that unjust discriminations are made by or under the authority of any foreign State against the importation to or sale in such foreign State of any product of the United States, he may direct that such products of such foreign State so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; and in such case he shall make proclamation of his direction in the premises, and therein name the time when such direction against importation shall take effect, and after such date the importation of the articles named in such proclamation shall be unlawful. The President may at any time revoke, modify, terminate, or renew any such direction as, in his opinion, the public interest may require."

It is no exaggeration to say that this is a tremendous weapon for retaliation; but, although there was undoubtedly serious tariff discrimination on the part of certain foreign countries against American commerce from 1890 to 1910, the club available to the President was too heavy to justify his using it in reprisals against the offending countries, for the absolute prohibition of importations is a bar-

barous method of commercial retaliation, belonging to the economic system of the Mercantilists.

Section 3 of the McKinley Tariff law of October 1, 1890, made a curious provision for tariff retaliation of limited scope. The free list of the Act included the articles sugar, molasses, coffee, tea, and hides, while Section 3 authorized the President to suspend by proclamation such free entry of any or all such articles when imported from countries imposing "duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable," and instead to impose thereon certain duties specified in Section 3. As intended, this threat of retaliatory action acted as a strong incentive to several countries to make favorable reciprocal commercial arrangements with the United States, and several of the governments of South and Central America and the West Indies responded. Three countries, however, declined, when specially invited, to enter into reciprocity arrangements with the United States providing for improved tariff treatment of American products. These were Haiti, Venezuela, and Colombia. On March 15, 1892, President Harrison issued three proclamations suspending the free entry of sugar, molasses, coffee, tea, and hides when imported from the countries mentioned, and declared those articles subject to the specified rates of duty. This is almost the only instance in recent years where the United States Government has actually retaliated against foreign governments for unjust tariff treatment of our exports. Section 3 of the Tariff of 1890 was virtually repealed by the Wilson Tariff of 1894.

The Dingley Tariff of July 24, 1897, contained, in the latter part of Section 3, a similar provision for the penalization of coffee, tea, and tonqua and vanilla beans, all of which, although on the free list of the tariff, were liable to certain specified duties when imported from a country which discriminated against the United States in tariff treatment. The duties on coffee and tea were to be three and ten cents per pound, respectively. This provision of the law was never utilized; nor was there any disposition to invoke it. It was terminated, of course, by the passage of the present tariff law.

The retaliatory provisions of the Payne-Aldrich law are

the most important that have ever been enacted by Congress. This tariff law gave the United States, for the first time in its history, a double tariff, of the maximum and minimum class. The double tariff features came into operation only on April 1, 1910, prior to which date the President had issued one hundred and thirty-four proclamations extending the benefits of the minimum tariff to all the countries of the world. The minimum tariff consists of the regular duties in Section 1 and the free list, while the maximum tariff consists of the rates of the minimum tariff plus twenty-five per cent. ad valorem, with the free list unchanged.

The minimum tariff having universal application, the potential severity of our maximum tariff is little understood. Just what it would mean if it were given universal application may be comprehended by a few figures. In the fiscal year 1910 the value of the dutiable imports into the United States from the world was \$785,000,000, on which duties to the amount of \$326,000,000 were collected under the minimum tariff. If the maximum tariff were applied it would mean an augmentation of the duties by twenty-five per cent. of \$785,000,000, or \$196,000,000, and this added to the duties actually collected would make the collections \$522,000,000. The fallacy here, of course, is that if the maximum were applied no such valuation of imports would come to the United States. The present duties average, on the basis of dutiable imports alone, about forty-two per cent. The maximum would bring the average ad valorem up to sixty-seven per cent., which would kill a large part of our import trade.

Taking the case of Germany: Our dutiable imports from the Empire in 1910 amounted to about \$112,000,000. The duties collected were in the neighborhood of \$45,000,000. The maximum tariff would necessitate the collection of \$28,000,000 additional, which would bring the collections to \$73,000,000 on a valuation of \$112,000,000. It is certain that the German products could not stand any such tariff treatment in our markets, particularly if the like products of other countries paid the minimum rates. There would be an extensive diversion of our established German trade, and Germany would be supplanted in our markets by her commercial rivals, particularly Great Britain and France.

The maximum tariff feature of the Payne-Aldrich Act has not only exercised a strong deterrent influence in pre-

venting undue discriminations against American commerce, but it has brought about the abandonment by several governments of discriminations previously practised against the United States. It was provided in the law that the double tariff provisions should become effective April 1, 1910. During the interval between August 6, 1909, when the Act went into effect, and April 1, 1910, the Department of State, with the aid of its foreign representatives and its tariff officers at Washington and with the co-operation of the Tariff Board appointed by the President, made a careful inquiry into the laws, decrees, and regulations of foreign governments affecting American commerce in all parts of the world, with a view to determining whether or not undue discrimination in any respect existed against the United States or its products. This inquiry involved extensive diplomatic negotiation between the Department and the representatives of the foreign governments at Washington. Many instances of undue discrimination were brought to the attention of the offending governments and suitable corrective measures were taken by them.

As a gratifying result of the tariff negotiations of the Department of State all instances of what may fairly be described as "*undue* discriminations" in tariff treatment against the commerce of the United States have been removed.

The beneficial results accomplished by the tariff negotiations above referred to may be briefly summarized as follows: Germany removed completely* her tariff discrimination against American products and applied her entire conventional tariff to the imports from the United States. She also admitted our pork products without requiring certificates showing microscopic inspection in the United States. Austria-Hungary made the same concession. France compromised by extending to the United States her minimum tariff on about seventy-five classes of articles imported from the United States that had not hitherto enjoyed the benefit of the lower schedule of duties. Greece reduced by one-half her duties on cotton-seed oil and lubricating oils. Canada reduced her general duties to the level of the intermediate rates in favor of thirteen important classes of imports from the United States of the same character as those enumerated in the Franco-Canadian reciprocity treaty. Brazil enlarged

* But see *infra* as to action taken by Germany, Dec. 1, 1911.

the list of American products entitled to a preferential tariff reduction on their importation. All the foregoing concessions represented actual improvement of conditions previously existing—in other words, better tariff treatment for American products aggregating in value at that time about \$60,000,000, and at the present time about \$75,000,000 per annum.

What is almost equally important, the United States obtained, in the course of these tariff settlements, formal guarantees on the part of the other foreign governments employing a dual tariff system that they recognize the principle of minimum for minimum and will continue to extend to the United States the benefit of their complete lowest tariffs in compensation for the minimum tariff of the United States. This was the principle underlying the tariff negotiations of 1909-1910. These governments included Austria-Hungary, Italy, Russia, Spain, Switzerland, Japan, Greece, Servia, and Bulgaria.

Unfortunately, the maximum tariff of the Act of 1909 has failed to remove all instances of discrimination against American products. The remaining discriminations are limited to less than a dozen countries. Everywhere in Europe, excepting only in France and Roumania, and since December, 1911, in Germany, American exports enjoy complete tariff equality with the like products of the most-favored nation. France declined to recognize the principle of minimum for minimum, but in lieu thereof made some compensatory concessions to the United States for that portion of her minimum tariff which she withheld. Fortunately, the minimum rates granted to the United States cover the large majority of the articles of American production or manufacture actually entering into the export trade with France, so that in a total exportation to France of \$125,000,000 about sixty-seven per cent. is on the free list; thirty per cent. is admitted to the minimum tariff, and the remaining three per cent. is subject to discrimination. Among the principal articles subject to this discriminatory treatment are the following: Live animals, most meat products, fish, dairy products, vegetables, chemical products, glass, china and earthenware, yarns, fabrics, embroideries and clothing, most boots and shoes, gloves, clocks and watches, many kinds of machines, electrical apparatus, boilers, stoves, iron and steel, manufactures of wood, and manufactures of rubber.

Roumania is another country where tariff discrimination is practised against the United States. On the ground that there is no commercial convention between the two countries, Roumania applies her entire general tariff to imports from the United States. Fortunately, on a majority of the comparatively few articles that are imported into Roumania from the United States, the rates of the general and conventional tariffs are the same.

Since December 1, 1911, when the new commercial treaties between Germany and Sweden and Japan, respectively, were put into effect, Germany has withheld from certain American products the benefits of the new conventional rates established by those treaties. The only important articles of American export to Germany affected by this action come under the German-Swedish treaty and include rubber footwear and drill-rods.

Two other forms of discrimination against American commerce are presented conspicuously in Europe—namely, excessive duties or other restrictions on edible cotton-seed oil and sanitary restrictions against American cattle and meats. Cotton-seed oil is the subject of discriminatory treatment of this kind in Austria-Hungary, where the duty amounts to twenty-eight cents per gallon, an absolutely prohibitive rate. In Italy a heavy manufacturing tax is imposed on the imported article in addition to the regular tax on vegetable oils. In Spain an excessive import duty is charged and denaturing is required. In Portugal importation of the edible product is practically prohibited.

The sanitary restrictions against American live cattle are quite general in northern Europe. The United Kingdom, Belgium, and Switzerland admit them for slaughter, but France and Germany do not, and even decline to permit their transportation in transit to Switzerland. Besides maintaining these restrictions against live cattle, Germany has an unusually stringent inspection system for American meat products. Canned meats and sausages are absolutely prohibited entry, while the regulations governing the importation of fresh meats are so strict that compliance with them is impracticable. The tariff negotiations to which I have already referred were ineffectual in bringing about the modification of this sanitary system so general in Europe.

In Belgium a curious discrimination exists in the form of the public tenders for the supply of the state railways with

lubricating oil. Year after year these tenders specify oil of Russian origin, thereby discriminating against an American oil-exporting concern that has repeatedly expressed its desire to bid.

The tariff concessions granted by the Dominion of Canada to France, in accordance with the provisions of the Franco-Canadian Reciprocity Treaty of 1907, were the subject of negotiation prior to the going into effect of our double tariff law. The United States, however, exports to Canada some articles which are still required to pay higher tariff duties than the like articles when imported into the Dominion from France.

Haiti withholds from the United States the benefit of certain reductions of duty made by her in favor of imports from France in a reciprocity treaty signed in 1907. Haiti made a similar treaty with Germany in 1909. A like case is presented in Salvador, where France, by reciprocity treaty, obtained certain tariff concessions in favor of some of her products, such as wines, soaps, and other toilet articles, the benefits of which Salvador declines to extend to the United States. Venezuela imposes a surtax of thirty per cent. ad valorem upon West-Indian imports, including those from Porto Rico, thereby discriminating against a part of the United States. The French colonial possessions, which use a modified form of the double tariff of France, discriminate more or less against American commerce in the application of that tariff. With the exception of Venezuela and French Guiana, there is no tariff discrimination against the United States in South America. Nor is there any in Asia or Africa worth mentioning, although there are neighborhood tariff relations which interfere with the development of American trade. Preferential tariff arrangements between colonies and their mother countries are not regarded as discriminations.

The instances of confiscatory, repressive, and discriminatory treatment of American financial investments in foreign countries are few and far between, and when they do arise there is invariably wide publicity given to the facts. The effect of the German Potash law of May 28, 1910, on the American-owned mine known as Sollstedt is a case in point, and so are the measures taken by the Austro-Hungarian Government against the Vacuum Oil Company, an American-owned concern doing business in that country.

Similar injustice against American enterprises has been, in isolated cases, practised by various governments of Latin America. There is no doubt that the Payne-Aldrich law fails completely to cover cases of this kind, since it relates exclusively to tariff matters. Hence there is urgent need of means of meeting foreign injustice of this kind by suitable reprisals.

Nearly all the foreign governments are adequately equipped to meet emergencies arising in the commercial relations of the country where discrimination is practised. All the double-tariff countries have, of course, the general or maximum tariff as the immediate remedy. As a rule, the rates of the maximum tariff average fifty per cent. higher than the rates of the minimum or conventional tariff, as the case may be.

In addition to the maximum tariff, however, there is usually provision for a penalty or war tariff. Several single-tariff countries have this means of retaliation. The Austro-Hungarian Government may impose a surtax up to two hundred per cent. of the regular duty, or the equivalent of the full value of the goods, and for goods on the free list a special duty up to one hundred per cent. *ad valorem*. The German Government may impose a surtax up to one hundred per cent. of the regular duties, or a surtax equivalent to the total value of the goods, and a duty of fifty per cent. *ad valorem* on goods on the free list; or the same duties as are applied to German goods in the country of origin. The French Government has the same penalty tariff provisions as Germany. The Italian Government may increase the duties up to fifty per cent. of the duties of the general tariff and impose an *ad valorem* duty up to twenty-five per cent. on goods on the free list. The Belgian Government may impose fifty per cent. additional to the regular duties and upon goods upon the free list fifteen per cent. *ad valorem* or an equivalent specific duty. Denmark has provision for a surtax up to forty per cent. of the regular duties, with ten per cent. *ad valorem* on goods on the free list, but these penal provisions may be applied for a period not to exceed forty weeks. The Spanish Government, in addition to the maximum tariff, may impose such surtaxes as it deems proper. The Canadian Government is authorized to impose a surtax amounting to one-third of the duties of the general tariff. The Japanese Government may apply a surtax not exceed-

ing the regular duties and for goods on the free list not to exceed fifty per cent. ad valorem. Russia, Switzerland, the Balkan States, Brazil, and the Argentine Republic also have effective penalty tariffs.

In order to supply the defects of our present penalty tariff legislation, and particularly to make it comprehend instances of injustice practised against American financial investments abroad, Senator Curtis of Kansas introduced in the Senate, in the final session of the Sixty-first Congress, a bill to amend Section 5 of the Act of August 30, 1890, which I have already described. This bill, although nominally an amendment of the old Act of 1890, is, to all intents and purposes, an amendment of Section 2 of the Payne-Aldrich law and, by a strict construction of constitutional law, it would seem that it should be initiated in the House of Representatives, for the reason that it affects a bill to raise revenue. This point, however, does not detract from its intrinsic merits.

According to the Curtis bill, "whenever the President shall be satisfied that the government of any foreign state (1), by repressive, discriminatory, or confiscatory measures, jeopardizes, impairs, or destroys the capital of citizens of the United States legitimately invested in such foreign state; or (2) makes undue discriminations or gives relative treatment not equivalently favorable, adversely affecting the importation into or sale in such foreign state of any product of the United States; or (3) imposes, by law or by administrative measures, exactions, regulations, or limitations restrictive of or harmful or amounting to relative treatment not equivalently favorable to the commerce of the United States with such foreign state, with respect to the imports into or exports from such state," he may direct, by proclamation effective ninety days after its date, the following action:

(1) The imposition on imports of all or such dutiable products of the offending state as he may deem proper of such increased ad valorem rates of duty, not less than five per cent. nor more than twenty-five per cent., as he shall determine are equivalent to the injury inflicted upon American capital or commerce; or

(2) The imposition of the like ad valorem rates of duty upon importations of all or such duty-free products of such foreign state as he may deem proper; or

(3) The imposition of the like ad valorem rates upon both dutiable and duty-free importations; or

(4) In what the President shall be satisfied are extreme cases of undue discrimination and unjust treatment of the commercial or financial interests of citizens of the United States on the part of such foreign state, the complete exclusion from importation to the United States of such products of the offending state as he may deem proper. All articles imported contrary to the Act are subject to forfeiture to the United States.

This bill would, if enacted into law, meet all possible emergencies confronting the commerce and foreign business interests of American citizens. It would correct three great defects in the present legislation at the command of the President. Firstly, it would apply to goods now on our free list and thus bring within the scope of the maximum tariff the importations from the countries of Latin America, including those which now discriminate against us largely because they have no fear of a maximum tariff. About ninety-six per cent. of our importations from Central America are on the free list, and the percentage in the case of Haiti is even larger. Secondly, it would afford an effective remedy for unjust treatment of the financial investments of the United States in foreign countries. Thirdly, it would give a graduated scale of punishment commensurate with and equivalent to the injury inflicted upon American commerce or capital. No one will deny that the existing legislation is sufficiently drastic; but there is a general feeling that it suggests a situation where capital punishment is provided for all the crimes in the calendar.

There may be a difference of opinion as to the merits of the Curtis bill; but these differences can scarcely be drawn on party lines, for this is in no sense a partisan question, but a broad question of patriotism and national dignity. Democrats and Republicans alike are desirous of seeing the dignity and prestige of the United States upheld in foreign countries, and no one will dispute that the President of the United States should be furnished with adequate authority and practical means of protecting the commercial and financial interests of American citizens in foreign countries.

JOHN BALL OSBORNE.